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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON

10 BOOGINHEAD LLC.,
11 Plaintiff,
12 v.
13 CHEEKY CHOMPERS LTD.,
14 Defendant.

Cause No.

COMPLAINT FOR
DECLARATORY JUDGMENT OF
DESIGN PATENT NON-
INFRINGEMENT

DEMAND FOR JURY TRIAL

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17 Plaintiffs BooginHead LLC. (“BooginHead”) complains of Defendant Cheeky
18 Chompers LTD., (“Cheeky Chompers”) as follows:

19 **NATURE OF LAWSUIT**

20 1. This is a claim for declaratory judgment of patent non-infringement arising
21 under the Federal Declaratory Judgments Act, 28 U.S.C. §2201, *et seq.*, and under the Patent
22 Laws of the United States, 35 U.S.C. §1, *et seq.* In particular, Plaintiff seeks a declaratory
23 judgment that the sole claim of Defendant's United States Design Patent No. D780,400 is not
24 infringed under one or more of 35 U.S.C. §271.

25 **THE PARTIES**

26 2. BooginHead LLC (“BooginHead”) is a Washington Limited Liability
27 Corporation headquartered in Issaquah, Washington. BooginHead is engaged in the business

1 of developing, manufacturing and selling a number of consumer products including teether
2 bibs for infants and toddlers.

3 3. Upon information and belief, Defendant Cheeky Chompers Ltd. (“Cheeky
4 Chompers”) is a U.K. corporation with a principal place of business in Edinburgh, Scotland.
5 Upon information and belief, Cheeky Chompers is engaged in the business of importing,
6 distributing, and selling chewy dribble bibs for infants and toddlers. Upon information and
7 belief, Cheeky Chompers transacts business and has provided to customers in this judicial
8 district and throughout the State of Washington chewy dribble bibs for infants and toddlers.

9 **JURISDICTION AND VENUE**

10 4. This is an action for a Declaratory Judgment that United States Design Patent
11 Number D780,400 is not infringed by BooginHead. This action arises under the Patent Laws
12 of the United States. Jurisdiction is based upon 28 U.S.C. §§ 1338(a), 2201 and 2202. As set
13 forth below, an actual justiciable controversy exists between the parties.

14 5. Venue is proper under 28 U.S.C. § 1391. Defendants have purposefully availed
15 themselves of the privilege of transacting extensive business in the State of Washington. This
16 Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§
17 1338(a).

18 6. Personal Jurisdiction over the defendants is proper in this Court. Venue in this
19 judicial district is proper under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

20 **BACKGROUND OF THE CONTROVERSY**

21 7. Upon information and belief, Cheeky Chompers is the owner of record of
22 United States Design Patent Number D780,400 (“the ‘400 patent”) which issued on March 7,
23 2017. A copy of the ‘400 patent is attached hereto as **Exhibit A**. The ‘400 patent generally
24 discloses a “neckerchief” and claims, “the ornamental design for a neckerchief as shown and
25 described.”

26 8. On March 24, 2017, Cheeky Chompers sent a letter, via its counsel, to
27 BooginHead at BooginHead’s Issaquah, Washington office. In that letter, Cheeky Chompers

1 brought the existence of the '400 patent to BooginHead's attention, stated (1) that, "Cheeky
2 Chompers has recently learned...that [BooginHead is] selling and distributing a chewy dribble
3 bib," (2) that, "Cheeky Chompers holds rights to the design for a chewy dribble bib under
4 U.S. Design Patent No. D780400," (3) that, "If BooginHead LLC is making, using or selling
5 products that fall within the scope of U.S. Patent No. D780400, BooginHead LLC is hereby
6 directed to cease and desist from such activity immediately," and (4) that, "If BooginHead
7 LLC is infringing this patent and continues with its infringement, such action may likely lead
8 to the immediate filing of a Complaint for Infringement by Cheeky Chompers." A copy of the
9 March 24, 2017 letter sent on behalf of Cheeky Chompers to BooginHead is attached as
10 **Exhibit B.**

11 9. As a result of the aforementioned March 24, 2017 letter sent on behalf of
12 Cheeky Chompers to BooginHead, BooginHead has a reasonable fear and apprehension that
13 patent infringement litigation will be brought against it. An actual justiciable controversy
14 therefore exists between the parties.

15 **THE CLAIMED ORNAMENTAL DESIGN**

16 10. The '400 patent includes four figures purportedly showing the "ornamental
17 design for a neckerchief" that is claimed to be original.

18 11. Figures 1, 2 and 3 of the '400 patent show, respectively, "a top plan view," "a
19 partial top plan view" and "a partial bottom plan view" of the neckerchief.

20 12. Figures 1 and 2 of the '400 patent, which show a "top plan view" and "partial
21 top plan view" of the neckerchief each show a corner portion having two arcs over the widest
22 portion of the corner, and fifteen equally sized circular dots arranged in a triangular pattern
23 under the arcs.

24 13. Figure 3 of the '400 patent, which shows "a partial bottom plan view" of the
25 neckerchief, shows a corner portion having thirteen equally sized circular dots in two arc-
26 shaped rows across the widest portion of the corner, and five arcs of progressively decreasing
27 size positioned under the dots.

14. None of the teether bibs developed, imported, made, sold, offered for sale or used by BooginHead incorporates or otherwise uses the “ornamental design” purportedly shown and claimed in the ‘400 patent.

COUNT I

Declaratory judgment of non-infringement of United States Design Patent No. D740, 400

15. BooginHead hereby repeats and incorporates by reference Paragraphs 1-14 above as if fully set forth herein.

15. BooginHead does not make, import, sell, offer sale or use neckerchiefs having the purported ornamental design disclosed and claimed in the ‘400 patent. In particular, none of BooginHead’s products includes any non-functional aspects of the neckerchief purportedly shown and claimed in the ‘400 patent.

16. Because BooginHead does not make, import, sell, offer sale or use neckerchiefs having the purported ornamental design disclosed and claimed in the ‘400 patent, BooginHead does not infringe the claim of the ‘400 patent under 35 U.S.C. §271 or otherwise.

PRAYER FOR RELIEF

WHEREFORE, BooginHead asks this Court to enter judgment against Defendant Cheeky Chompers and against its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it granting the following relief:

A. A declaration that none of the teether bibs made, imported, sold, offered for sale or used by BooginHead infringes and valid claim of Defendant's United States Design Patent No. D780,400.

B. A finding that this case is exceptional and an award to BooginHead of its attorneys' fees and costs as provided by 35 U.S.C. § 284;

C. A permanent injunction prohibiting further allegations of infringement on the part of Cheeky Chompers against BooginHead.

1 D. Such other and further relief as this Court or a jury may deem proper and just.

2 **JURY DEMAND**

3 BooginHead demands a trial by jury on all issues presented in this Complaint.

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5 Dated this 28th day of April, 2017.

6 Respectfully submitted,

7
8 /s/ Philip P. Mann
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